Greenleaf, Professor Parsons, Chief-Justice Parker, and Professor Washburne; and a complete set of the first and last editions of the different books published by instructors during their connection with the School. The Harvard exhibit is in the so-called "Hall of Liberal Arts," and will remain under the personal charge of Mr. Williams, the Publication Agent of the University.

THE LAKE FRONT CASES AGAIN. — The REVIEW is indebted to Merritt Starr, Esq., '81, of the Chicago bar, for a valuable criticism of the note in the March number concerning the Lake Front Cases (146 U. S. 387). Mr. Starr says in part: "Your note seems to reflect unfavorably upon the opinion of the court. Among other things it contains the following: —

"'The decision must be that any large grant of the kind is a license revocable by the Legislature whenever in the judgment of the court such interpretation would largely promote the pecuniary welfare of the people; for it is here only pecuniary welfare that is affected; the community saves what constitutional confiscation would cost.'

"The fundamental character of the decision leads me to hope that you will permit me, as an alumnus of the Law School, to indicate briefly some reasons for believing that this is an inaccurate interpretation of the decision.

"In the opinion Mr. Justice Field says: 'That the State holds the title to the lands under the navigable waters of Lake Michigan, within its limits, in the same manner that the State holds title to soils under tide water, by the common law, we have already shown; and that title necessarily carries with it control over the waters above them whenever the lands are subjected to use. But it is a title different in character from that which the State holds in lands intended for sale. It is different from the title which the United States hold in the public lands which are open to pre-emption and sale. It is a title held in trust for the people of the State, that they may enjoy the navigation of the waters, carry on commerce over them, and have liberty of fishing therein, freed from the obstruction or interference of private parties. . . . A grant of all the lands under the navigable waters of a State has never been adjudged to be within the legislative power; and any attempted grant of the kind would be held, if not absolutely void on its face, as subject to revocation.'

"This is hardly an admission of a power to grant such property.

"The difference shown by the court between property in lands *held for sale* by the State, and land which is *not held for sale* by the State, is most important.

"The lands acquired by the United States from other Governments were acquired by grant, and lie in grant, — they are made the subjects of barter and sale, and held for the purpose of sale. But the title and dominion of the Government over the harbors of the realm, and over the submerged lands of the harbors, was not acquired by grant, and does not lie in grant. The title of the people of a State in such harbors and lands is not derived. It is incidental to and inherent in the sovereign people of the State. It has such title and dominion independent of the ownership of adjacent lands. It is a portion of the royalties belonging to the Government, and held in trust for public purposes, of navigation and fishery. (*Hardin* v. *Jordan*, 140 U. S. 381; *Martin* v. *Waddell*, 16 Pet. 367–410; *McCready* v. *Virginia*, 94 U. S. 394, 395; *Union Depot Co.* v. *Brunswick*, 31 Minn. 303; *Smith* v. *Maryland*, 18 Howard, 75; *Providence*

Engine Co. v. *Steamship Co.*, 12 R. I. 348, 356; *Pollard's Lessee* v. *Files*, 2 How. 591; *Weber* v. *Harbor Commissioners*, 18 Wall. 57.)

"Under these rules of law no grant of this property could have validity except in carrying out the purposes of the trust in such property; and the designation of a public agency for accomplishing such public purposes can be changed from time to time. This has been repeatedly held by the same court. In *East Hartford* v. *Hartford Bridge Co.*, 10 How. 511, 534, it is said: —

"'One of the highest attributes and duties of a Legislature is to regulate public matters with all public bodies, no less than the community, from time to time, in the manner which the public welfare may appear to demand.

"'It can neither *devolve these duties permanently on other public bodies*, nor permanently suspend or abandon them itself. . . .

"'It is bound also to *continue to regulate such public matters and bodies* as much as to organize them at first.

"'Where not restrained by some constitutional provision, this power is inherent in its nature, design, and attitude; and the community possesses as deep and permanent an interest in such power remaining in and being exercised by the Legislature, when the public progress and welfare demand it, as individuals or corporations can, in any instance, possess in restraining it.'

"The court held that the franchise in that case was not a contract protected by the Constitution, not only because the town which held the franchise of the public was a municipal and political corporation, but because in granting the franchise the Legislature was acting 'in relation to a public object, being virtually a highway across the river over another highway up and down the river.' And the court say that whatever in the nature of a contract could be considered to exist in such a case, there must be implied in it a condition that the power still remained, or was reserved, in the Legislature to modify or discontinue the privilege in the future as the public interests from time to time seem to require.

"The argument for the Railway Company seeks to justify the grant of public right to the Railway Company, on the ground that it is a public corporation, and on the ground of the public character of the grant, and then claim for the grant the protection of private contracts, on the ground that the Railway Company is a mere private corporation. The grant cannot be so justified without, by the same argument, removing it from the protection of private contracts.

"Your note states that the arguments of the minority are very hard to escape; that the power to grant such land, the minority of the court reason, is admitted by the majority, and that it is difficult to say by what principle the extent of the grant is to be limited, as that is a matter of legislative discretion, having regard to the reasonable connection of the means to the end; and that it is impossible to say that the amount of land granted in this case is absurdly beyond the needs of a great railroad for its terminal facilities.

"The difficulty with this position and with the dissenting opinion of Judge Shiras seems to me to be, that the granting of land for terminal facilities for a railroad is not the proper purpose to which to devote the public waters of the State and the submerged lands thereunder, in promotion of the trust on which it is held; so that the needs of a great railroad for its terminal facilities is not a fair test of the reasonableness of

the extent of the grant. An examination of the former holdings of the court I think will remove the difficulty that the writer of the note discovers. The principle laid down in *Terrett* v. *Taylor*, 9 Cranch, that a legislative grant is not revocable, must be held to apply to that which is properly the subject-matter of such a grant, *e. g.*, public lands held for sale. Else the integrity of our institutions might be very seriously impaired if whatever of public right the Legislature should see fit to make the subject of a grant is to be held to be beyond recall.

"There are some things which the Legislature cannot permanently grant away; its title to the harbors of the country is one."

EVIDENCE — ADMISSION OF DECLARATIONS TO PROVE THE INTENTION OF THE DECLARANT. — The recently decided cases of *Commonwealth* v. *Trefethen*, 31 N. E. Rep. 961 (Mass.), and *Siebert* v. *People*, 32 N.E. Rep. 431 (Ill.), show a curious divergence of authority. In both cases the question was the same, and the decision diametrically opposite. Both were indictments for murder, and in both the defendant, to establish the defence of suicide, offered in evidence statements made by the deceased to third parties that he intended to kill himself. In both, the lower court excluded the evidence, and the case came up on the defendant's exceptions. The Illinois court sustained the ruling below, on the ground that to make such statements admissible they must accompany and qualify some act which would itself be admissible, — must be part of the *res gestæ*. In their decision they cite with approval the Massachusetts case of *Commonwealth* v. *Felch*, 132 Mass. 22.

On the other hand, in *Commonwealth* v. *Trefethen*, the Massachusetts court expressly refused to follow its earlier decision, and sent the case back for a new trial, laying down the rule that in any case where a man's intention is provable, his declarations, made at or about the time when such intention is alleged to have existed, are admissible.

In its present form the rule of the Massachusetts court is a novelty; but it is foreshadowed in several classes of cases where intention or some other mental state has been in issue. Bankruptcy cases, where it was material to prove that the bankrupt had acted with intent to defraud his creditors, *Rawson* v. *Haigh*, 9 J. B. Moore, 217, and cases where the validity of a will was attacked on the ground of insanity, *Waterman* v. *Whitney*, 11 N. Y. 157, afford instances of the admission of direct statements of intention. In general, these and similar decisions have proceeded on the *res gestæ* ground, even where, as in *Lake Shore Ry.* v. *Herrick*, 29 N. E. Rep. 1052, it is most difficult so to explain them; or the declarations have been regarded as "verbal facts" themselves evidential, *Chase* v. *Lowell*, 151 Mass. 422; or they have been let in, as in *Du Bost* v. *Beresford*, 2 Camp. 511, without any clear indication of the reason for their admission. So in speeches showing that the speaker thought himself dying, admitted as a foundation for dying declarations, the evidence seems to have been let in as a matter of course. *Commonwealth* v. *Cooper*, 5 Allen, 495, 497; *Commonwealth* v. *Haney*, 127 Mass. 455; *Rex* v. *Spilsbury*, 7 C.& P. 187; 1 Greenleaf, § 187.

The first case containing a clear and explicit statement of the rule was *Mutual Ins. Co.* v. *Hillmon*, 145 U. S. 285, in which, to prove that a man left Wichita on a certain day, the Supreme Court allowed his letters writ-